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workers in question.[9] The imposing array of evidence adduced by sociologists seems clearly to indicate the need of a remedy for the starvation wages paid the workers in many of the sweated industries.[10] The health of the employees is enfeebled by the conditions under which they must live, their value as citizens is lessened, and the women are to a considerable extent unfitted for motherhood and driven into immorality. Whether the state control of wages is calculated to improve these conditions is for the courts to say.[11] The question is obviously one of fact. The court, however, should not be controlled by the economic theories of the judges who compose it, but should accept any reasonable attempt of the legislature to solve the industrial problems which confront modern lawgivers, so long, at least, as it does not "infringe fundamental principles as they have been understood by the traditions of our people and our law." [12]

PARENTAL LIABILITY FOR A SON'S USE OF THE FAMILY AUTOMOBILE. — Generally the father is better able than the son to pay for harm caused by the latter. It is, however, well settled that at common law the parent is not liable for the torts of even his minor child.[1] But the injured party may benefit by discovering a master and servant relationship between the two.[2] Even this relationship avails nothing if the servant is acting for his own purposes "on a frolic of his own." [3] Thus when a hired chauffeur goes for a "joy-ride" in his employer's car, the employer is not liable for any damage the chauffeur may cause.[4] This is so when he takes the car for his own delectation with or without permission.[5] Moreover, when a son takes his father's horse for his own affairs no liability attaches to the father.[6] Between a hired chauffeur and a pampered son there is a considerable difference in fact. The difference is still more marked between an automobile and a horse. Does the law make a distinction?

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[9] See Mugler *v.* Kansas, 123 U. S. 623, 661; Minnesota *v.* Barber, 136 U. S. 313, 320; Lawton *v.* Steele, 152 U. S. 133, 137.

[10] See literature referred to in the principal case; also, ANNALS AM. ACAD. POL. AND SOCIAL SCIENCE, July, 1913; BROWN, UNDERLYING PRINCIPLES OF MODERN LEGISLATION, p. 316.

[11] In this connection the rapid spread of the legislative minimum wage in this country is significant. The following states have adopted it in some form: California, STATUTES 1913, cap. 324; Colorado, LAWS 1913, cap. 110; Massachusetts, ACTS 1912, cap. 706, ACTS 1913, caps. 330, 673; Minnesota, LAWS 1913, cap. 547; Nebraska, LAWS 1913, cap. 211; Ohio, Constitutional Amendment, 1913; Oregon, ACTS 1913, cap. 62; Utah, LAWS 1913, cap. 63; Washington, LAWS 1913, cap. 174; Wisconsin, STATUTES 1913, cap. 1729, LAWS 1913, cap. 712.

[12] Holmes, J., *dis.*, in Lochner *v.* New York, *supra*, at p. 76.

[1] Chastain *v.* Johns, 120 Ga. 977, 48 S. E. 343; Moon *v.* Towers, 8 C. B. (N. S.) 611.

[2] Lashbrook *v.* Patten, 1 Duv. (Ky.) 316; Smith *v.* Jordan, 211 Mass. 269, 97 N. E. 761.

[3] Parke, B., in Joel *v.* Morison, 6 C. & P. 501.

[4] Lotz *v.* Hanlon, 217 Pa. 339, 66 Atl. 525; Jones *v.* Hoge, 47 Wash. 663, 92 Pac. 433; Hartnett *v.* Gryzmish, 105 N. E. 988 (Mass.). But see Whimster *v.* Holmes, 164 S. W. 236 (Mo.).

[5] Davies *v.* Anglo-American Auto. Tire Co., 145 N. Y. Supp. 341; Cunningham *v.* Castle, 127 N. Y. App. Div. 580.

[6] Maddox *v.* Brown, 71 Me. 432.

That the law does see a difference in the case of the son and the motor car combined, appears in a recent South Carolina case, where the son habitually drove the family machine with his father's consent. The father was held, although at the time of the accident the son was using the car for his own pleasure. *Davis* v. *Littlefield*, 81 S. E. 487.[7] The court argued that in giving himself health and pleasure the son was acting as his father's servant in the scope of his employment.[8] A few other cases have taken this view.[9] Where the son takes the family out, he might very properly be considered the servant of his father.[10] But when he frolics off with the automobile on a party of his own, this agency relationship is more difficult to conceive. Suppose, however, a frail son, or one injuring his health by too zealous an application to work. His affectionate, though wealthy, father is much concerned. He buys a machine, and tells his son to use it in the pursuit of health and pleasure. While thus pursuing, the son pursues and runs down the plaintiff instead. If these facts could be proved, a not unwilling jury might find that the son's frolic was not "a frolic of his own," but really of his father's. The question is whether any father does this. It is submitted that most of them do not. Such an idea of vicarious enjoyment is far too fanciful — as much so in the case of an automobile as it would be, for instance, if the father bought a pair of roller skates for the son, or told him to use the family roller skates. The argument might as well be extended to a chauffeur who is occasionally allowed the use of the car so that he will be more satisfied with his work.

Another line of reasoning has been applied recently in a Missouri case, where the father was held because an automobile is a dangerous instrumentality. *Hays* v. *Hogan*, 165 S. W. 1125.[11] The difficulty with this is that it is rather well settled that an automobile is not a dangerous instrumentality.[12] As to boys the courts are silent.[13] An automobile is dangerous to third persons only when operated by a dangerous driver.

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[7] The son was a minor, but this had no effect on the decision. For a statement of this case, and the two other recent cases cited in this note, see this issue of the REVIEW at page 100.

[8] The father had testified that he bought the machine for the "health and pleasure" of his family. Therefore, the court said, he made the health and pleasure of the family his business, and the son in enjoying himself was performing this business.

[9] See Daily *v.* Maxwell, 152 Mo. App. 415, 133 S. W. 351; Birch *v.* Abercrombie, 74 Wash. 486, 133 Pac. 1020. In Kayser *v.* Van Nest, 146 N. W. 1091 (Minn.) two sisters were out driving with friends. From the language of the court, the decision would have been the same had only one been present.

[10] Smith *v.* Jordan, *supra*; McNeal *v.* McKain, 33 Okl. 449, 126 Pac. 742; Missell *v.* Haynes, 91 Atl. 322 (N. J.); Ploetz *v.* Holt, 144 N. W. 745 (Minn.).

[11] The Springfield Court of Appeals on an appeal from a motion granting the defendant a new trial gave judgment for the plaintiff. A motion for rehearing was overruled, but a motion to transfer to the Supreme Court was sustained on the ground that the case conflicted with previous decisions.

[12] Daily *v.* Maxwell, *supra*; Cunningham *v.* Castle, *supra*; McNeal *v.* McKain, *supra*; Jones *v.* Hoge, *supra*; Parker *v.* Wilson, 60 So. 150 (Ala.); Danforth *v.* Fisher, 75 N. H. 111; Hartley *v.* Miller, 165 Mich. 115, 130 N. W. 336; Fielder *v.* Davison, 139 Ga. 509, 77 S. E. 618. But see Ingraham *v.* Stockamore, 63 N. Y. Misc. 114; and *dicta* in Doran *v.* Thomsen, 76 N. J. L. 754.

[13] In Allen *v.* Bland, 168 S. W. 35 (Texas) the son, age eleven, owned the car. There was evidence to show that his head barely came above the steering wheel. The court said the automobile was not a dangerous agency. One might draw his own conclusions as to the boy.

So if the father entrusted the car to a very young or incompetent son, he might well be held on account of his own negligence — much as if he had given such a youth a gun.[14] But on the assumption that the son was *compos mentis* (except as afterwards shown by the "joy-ride") the father should not be liable. A recent New York case has so held, following previous authority in that state.[15] *Heissenbuttel* v. *Meagher*, 162 N. Y. App. Div. 752. This is in accord with the majority of the decided cases.[16]

But it may be urged, on the other hand, that, as automobiles have latent possibilities of causing great damage, and yet are treated almost disrespectfully by the youngest children, as a matter of justice the owner should be absolutely liable for injuries inflicted. Such a rule might have a salutary effect, but its creation is within the province of the legislatures, not of the courts, and should not be arrived at by distorting the principles of agency and torts to fit the case.[17] Let not the ancient maxim be transformed to read, *Qui facit per auto facit per se*.[18]

STATE POWER TO TAX THE PROCEEDS OF INTERSTATE COMMERCE. — By what method and to what extent a state may tax the receipts from interstate commerce without its constituting an interference with federal regulation is a question which has been frequently presented to the United States Supreme Court. This judicial consideration, however, has formerly served to obscure rather than to facilitate the solution of the problem, as upon several occasions the court has altered its position, not infrequently with its members nearly evenly divided; while each of its views, for a time at least, has found followers. At first a tax was permitted "upon the gross receipts" of transportation companies even in addition to other property assessments.[1] But the court refused to follow this case,[2] and its result was soon repudiated.[3] A levy

[14] Meers *v.* McDowell, 110 Ky. 926, 62 S. W. 1013; Johnson *v.* Glidden, 11 S. D. 237, 76 N. W. 933.

[15] Maher *v.* Benedict, 123 N. Y. App. Div. 579. See also Roberts *v.* Schanz, 144 N. Y. Supp. 824.

[16] Maher *v.* Benedict, *supra*; Parker *v.* Wilson, *supra*; Reynolds *v.* Buck, 127 Ia. 601, 103 N. W. 946; Doran *v.* Thomsen, *supra*; Linville *v.* Nissen, 77 S. E. 1096 (N.C.); 25 HARV. L. REV. 734. Tanzer *v.* Read, 160 N. Y. App. Div. 584, was a case where the wife of the owner was driving. The court said she was in no sense acting as an agent.

[17] See remarks of Clarke, J., in Cunningham *v.* Castle, *supra*.

[18] Although to a Greek scholar such a maxim may appear sound, it is philologically incorrect, and should not be translated into English.

[1] State Tax on Railway Gross Receipts, 15 Wall. (U. S.) 284, Justices Miller, Field, and Hunt dissenting. The court, reasoning on the analogy of Brown *v.* Maryland, 12 Wheat. (U. S.) 419, declared this to be no less valid than a tax on goods imported into the state and mingled with the general mass of property. The case was followed in Western Union Telegraph Co. *v.* Mayer, 28 Oh. St. 521, and Western Union Telegraph Co. *v.* Commonwealth, 110 Pa. 405, 20 Atl. 720.

[2] Fargo *v.* Michigan, 121 U. S. 230.

[3] Philadelphia and Southern Steamship Co. *v.* Pennsylvania, 122 U. S. 326. The answer to the suggested analogy of Brown *v.* Maryland, *supra*, is pointed out by Bradley, J., 122 U. S. 326, 341: imported goods "are not followed and singled out for taxation as imported goods, and by reason of their being imported." The same principle is to be found in Ratterman *v.* Western Union Telegraph Co., 127 U. S. 411.